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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|--------------------------|---------------------|------------------|
| 09/534,730 | 03/27/2000 | William Richard Saunders | VTIP3 | 5419 |

22208 7590 12/15/2005

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EXAMINER

MEI, XU

ART UNIT PAPER NUMBER

2644

DATE MAILED: 12/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/534,730

Applicant(s)

SAUNDERS ET AL.

Examiner

Xu Mei

Art Unit

2644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 30-38, 40 and 42-65 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 30-38 and 40 is/are allowed.
- 6) ☒ Claim(s) 42-65 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 09/16/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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DETAILED ACTION

1. This communication is responsive to the applicant's amendment dated 09/16/2005.

Claim Rejections - 35 USC § 101

2. Claims 42-65 are rejected under 35 U.S.C. 101 because the claimed invention is directed to two classes of statutory subject matter. The claim attempts to embrace both an apparatus or machine and a process. This is precluded by the language of 35 U.S.C. 101, which sets forth the statutory classes of invention in the alternative only. While a single patent may include claims directed to more than one statutory class of invention, no basis exists for permitting a combination of two separate and distinct classes of invention in a single claim. (See explanation under 35 USC 112, second paragraph, below.)

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 42-65 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 42 is directed to two classes of statutory subject matter. The claim attempts to embrace both an apparatus or machine and a process. This is precluded by the language of 35 U.S.C. 101, which sets forth the statutory classes of invention in the alternative only. While a single patent may include claims directed to more than one statutory class of invention, no basis exists for permitting a combination of two separate and distinct classes of invention in a single claim. The claiming of two statutory classes of invention in a single claim is ambiguous and renders the claim indefinite. This claim recites a heteronomous controller (apparatus) and a processor adapted with different functional steps (method).

Claim 42 recites the limitation "the control speaker system" in line 9. There is insufficient antecedent basis for this limitation in the claim.

Claim 42 recites limitation "wherein the noise reference signal is correlated with the acoustically transduced signal

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from the noise error sensor" is indefinite. The claim language as recited is unclear how the two signals claimed are being 'correlated' to each other.

Claim 42 recites the limitation "the feedback adaptive active noise attenuating control signal portion" in lines 14-15. There is insufficient antecedent basis for this limitation in the claim.

5. Claims 42-65 are too indefinite to examine against art at this time.

6. Claims 30-38 and 40 are allowable over prior art of record.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the

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advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Xu Mei whose telephone number is 571-272-7523. The examiner can normally be reached on Monday-Friday (9:30-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian Chin can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Xu Mei
Primary Examiner
Art Unit 2644
12/09/2005